IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.522 OF 2006
IN
NOTICE OF MOTION NO. OF 2006
IN
B.C.C.C.L.C. SUIT NO.3149 OF 2006
WITH
CIVIL APPLICATION NO.659 OF 2006

Mohammed Sajid Abdulla Shaikh & Ors....Appellants

Versus

Municipal Corpn. of Gr.Mumbai & Anr....Respondents

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Mr.Anil Singh with Mr.Dhanesh R.Shah for Appellants.

Mrs.Geeta Joglekar for Respondent No.1.

Mr.Sakhardande i/b Mr.R.M.Pandey for Respondent No.2.

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CORAM: A.M.KHANWILKAR, J.

AUGUST 10, 2006.

P.C.

1. Heard Counsel for the parties. Perused the relevant documents on record.

2. Admit. Mrs.Joglekar waives notice for Respondents 1. Mr.Sakhardande waives notice for Respondent No.2.

3. This Appeal from Order takes exception to the Judgment and Order passed by the City Civil Court, Greater Mumbai dated 14th July 2006 in Notice of Motion No.Blank of 2006 in L.C.Suit No.3149 of 2006. By this order, the Trial Court has refused to grant ad-interim relief as prayed by the Appellants/Plaintiffs. The Trial Court has recorded reasons for doing so, amongst others, in Paragraph 3 of the impugned Judgment. However, the Trial Court has not addressed to the core issue raised on behalf of the Plaintiffs. Inasmuch as according to the Plaintiffs, the suit notice refers to unauthorised structure on RG plot. Whereas, the structure owned and possessed by the Plaintiffs was on Survey No.258 Hissa No.3 corresponding to CTS No.652 and not CTS No.620/A/1/4-1/2/3 as alleged in the suit notice, which is reserved for recreation ground. This contention was specifically raised by the Plaintiffs before the Competent Authority. However, the Competent Authority has proceeded to hold that the suit structure is on CTS No.620/A/1/4-1/2/3 which is reserved for recreation

ground.

4. The grievance of the Plaintiffs/Appellants is that no basis has been recorded by the Competent Authority for holding that the suit structure was on the stated plot as referred to in the suit notice. Whereas, there was documentary evidence to establish the fact that the structure owned and possessed by the Appellants/Plaintiffs was on Survey No.258, Hissa No.3, corresponding to CTS No.652. The documents were official records. This aspect has not been considered by the lower Court at all. No reference has been made to this contention raised on behalf on the Plaintiffs/Appellants, which goes to the root of the matter. If the Court, on analysing the documents pressed into service by the Plaintiffs/Appellants were to accept the case of the Appellants that the structure owned and possessed by them was on plot other than recreation ground, the question of proceeding with demolition action of such plot and more so, with which the Respondent No.2 will have no causal connection does

not arise nor can be sustained, in fact or in law.

5. Thus understood, the order in question will have to be set-aside and the parties relegated before the Trial Court for considering all aspects of the matter in the pending Notice of Motion. All questions are left open to be decided by the Trial Court in the said Notice of Motion.

6. Till the Notice of Motion is finally disposed of, parties are directed to maintain status-quo with regard to the suit property as on 18th July 2006 when order of status-quo was passed by this Court.

7. It will be open to the Appellants/Plaintiffs to take out appropriate application for mandatory orders of reconstruction of the demolished structure before the Trial Court, if so advised. That application will have to be considered on its own merits in accordance with law.

8. As Counsel appearing for the parties

assure that they will extend full cooperation for early disposal of the Notice of Motion, the Trial Court may proceed to finally dispose of the Notice of Motion on the next date of hearing which is

scheduled as 1st September 2006 or soon thereafter, in any case, by end of September 2006.

9. Parties appearing before this Court through Counsel assure that pleadings will be completed in the pending Notice Motion on or before 28th August 2006. Reply to the Notice of Motion will be filed on or before 21st August 2006. Rejoinder, if any, on or before 28th August 2006. Pleadings will be filed in the Registry of the lower court.

10. The proposed Notice of Motion to be taken out by the Appellants/Plaintiffs for relief of reconstruction of the demolished structure can be heard and decided along with the pending Notice of Motion or independently, as may be advised. Pendency of that Motion should not come in the way of the Trial Court to finally dispose of Notice of

Motion No.Blank of 2006, hearing of which is expedited under this order. Appeal allowed on the above terms.

11. In view of this order, Civil Application stands disposed of.

A.M.KHANWILKAR, J.